

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MARIA ALSINA ORTIZ,

Plaintiff,

vs.

EMILIO CASTILLO, ET AL.,

Defendants.

* CIVIL 98-1893 (JAG)
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* San Juan, Puerto Rico
* November 28, 2005
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EXCERPT OF THIRD DAY OF JURY TRIAL -
PARTIAL TESTIMONY OF DR. VICTOR LLADO

BEFORE THE HONORABLE JAY A. GARCIA-GREGORY,
UNITED STATES DISTRICT COURT JUDGE

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APPEARANCES

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JOSUE GONZALEZ ORTIZ, ESQ.

Puerto Rico Department of Justice

1 CONTINUED DIRECT EXAMINATION

2 BY MR. JAMES:

3 Q. Okay, what is your opinion, sir, with a reasonable
4 degree of medical certainty, as to the emotional damages or
5 mental disorder of Orlando Ocasio Alsina due to the delay of
6 medical access when he had toxoplasmosis, HIV dementia, and
7 a head trauma, sir?

8 A. In my opinion, he developed, most probably, a major
9 depressive disorder as a result of the various organic
10 physical conditions and the various problems he was
11 experiencing, and that depressive disorder was never
12 properly diagnosed and treated.

13 Therefore, that lack of access to adequate diagnosis
14 and treatment from the psychiatric point of view contributed
15 to his suffering and his becoming very emotional, very
16 unstable, due to the depression he was suffering, and it's
17 possible that it may have, in some way, affected his
18 physiological and his physical conditions.

19 Like I explained before, there is a close relationship
20 between the somatic over the physical and the psychological.
21 It has been proven by certain research and has been
22 confirmed by professors like Marshall Forstein from Harvard
23 and Frank Fernandez from the University of Tampa that the
24 absence of adequate psychiatric treatment in AIDS patients
25 affects the progression of the illness and the severity of

1 the AIDS condition.

2 So, in my estimation, that is an additional twist in
3 the damage; that there is a distinct possibility that with
4 treatment psychiatrically, he would have enjoyed a better
5 quality of life for whatever period of life he had
6 remaining, at least from the psychological and the emotional
7 point of view. And there is a possibility, in my opinion,
8 that his overall physical state, or at least immunity, could
9 have been improved with the psychiatric treatment.

10 But strictly speaking from the emotional, from the
11 psychiatric point of view, that -- that severe depression he
12 suffered was never properly treated and diagnosed. And
13 that, in and of itself, aside from lack of treatment for the
14 medical conditions which apparently was also present there
15 for the same period of time -- that is to say, AIDS or
16 toxoplasmosis and so on, which were added insult to injury
17 and were additional burdens -- but just strictly speaking
18 about the depression, that in and of itself is sufficiently
19 distressing to anyone, to be so depressed and feeling so
20 affected emotionally and not get any treatment.

21 So essentially that's what I think.

22 MR. JAMES: I have no further questions, your
23 Honor.

24 CROSS-EXAMINATION

25

1 BY MR. GONZALEZ:

2 Q. Dr. Llado, you have testified that Mr. Ocasio Alsina
3 suffered from a deep depression because of his -- his
4 conditions that are related -- that were related with AIDS.

5 What were those conditions?

6 A. Well, I think his depressive condition has multiple
7 origins. One factor is the trauma of the riot itself. That
8 event, in and of itself, provokes strong emotional
9 reactions.

10 And then his being allegedly assaulted, falling down,
11 suffering trauma to the head, all of that is, again, adding
12 insult to injury and compounding the origin of the
13 depressive condition. The depressive condition is caused by
14 multiple factors.

15 The trauma, emotionally, of the riot -- you know, when
16 you are part of a riot like that, it's not just the beating
17 you suffer or the fall, and so on. It's also the fear and
18 the emotional, intense reaction, which, I think, contributes
19 to trigger the depression initially.

20 Chronologically, then, you have the trauma to the
21 head, the deficits, the neurological deficits, the
22 hemiplegia, the hemiparalysis he suffers as a result of the
23 blow, and the brain injuries described by Dr. Marcial.

24 There is also contributing elements that come from the
25 AIDS itself: the dementia. AIDS induces depression

1 frequently in and of itself, aside from the other factors.

2 So if you continue adding little bits of different
3 factors that are contributing to the depression -- we have
4 many very serious factors, you know? Toxoplasmosis is also
5 a serious condition which, if untreated, will affect the
6 brain and, you know, will contribute to the development of
7 the depression.

8 And then, after several days, realizing that you can't
9 walk, feeling so dependent, feeling so upset, not getting
10 sufficient treatment, wanting treatment and not getting
11 treatment, will get a person very anxious and very
12 desperate, and eventually start contributing to a
13 depression. Because, after all, ultimately, in many ways,
14 when this happens, it makes you feel you are good for
15 nothing. If nobody pays attention to you, nobody treats
16 you, nobody helps you, you feel so bad. You know, you start
17 feeling upset and guilty and feeling, you know, "What's
18 wrong with me? I must be really in bad shape."

19 And then that contributes to the sense of sadness and
20 the depression, because it affects your self-image, your
21 body image, feeling like that.

22 So as time goes by, the depression, untreated,
23 continues to distend and aggravate. That's the normal
24 course of an untreated depression.

25 Q. And you stated that the AIDS itself is a cause of

1 depression; is that correct?

2 A. I'm sure it contributed a part. You know, it's hard
3 to quantify, because he had so many serious factors, but I
4 am sure that the AIDS and the dementia that I am sure was
5 present was a contributing factor there, yes.

6 Q. And when he entered -- and as you stated before, you
7 found out from the medical record that he already had AIDS
8 when he entered the correctional system.

9 A. That's my opinion.

10 Q. We were talking about the use of drug in this person,
11 and as far as I remember, you stated that heroin was a
12 depressant and has some effects on the people. Is that
13 correct?

14 A. Yeah, I said it could induce hypoactivity or
15 depressivelike symptoms. But it's usually while you are
16 using. I said it was a chronic active use. If you are not
17 using it anymore, then those effects may fade away over
18 time.

19 Q. And you told us -- and you stated that from the record
20 Ocasio Alsina or Mr. Ocasio Alsina had used heroin for a
21 long period of time; is that correct?

22 A. Yes, um-hmm.

23 Q. So he has a chronic problem of addiction. It is
24 likely that he had this chronic problem of drug use; is that
25 correct?

1 A. It so appears, before entering the correctional
2 facility. The past history of substance abuse.

3 Q. Can you tell us if drug withdrawal has any effect upon
4 the person who is an addict?

5 A. Yes, usually for a few hours or a few days, maybe.
6 You know, agitation, bone aches, you know, and so on. But
7 again, once you recover from the withdrawal, at least those
8 physical symptoms are not going to be as evident.

9 Q. A person -- how many days? A person who has a chronic
10 problem of drug use, how many days he suffered from this
11 withdrawal?

12 A. This is variable. It depends on the amount. It
13 depends on the types of medication you are using and how
14 frequently you are using it. Because, you know, chronic use
15 may be intermittent. Sometimes chronic heroin addicts don't
16 use heroin in the same amount or don't use it daily. You
17 know, it varies.

18 So the reaction and whether or not you are going to
19 have severe withdrawal effects depends on the exposure, the
20 amount, and the frequency.

21 Q. So -- but can that withdrawal effect take weeks to
22 overcome?

23 A. Not usually, from the physical point of view, if it's
24 only heroin, unless there is a mixture of other things. But
25 normally the most prominent physical symptoms are going to

1 disappear within a few days.

2 Q. Okay.

3 But you can't state it for sure how many days in this
4 case, in this specific case.

5 A. If we are talking about only heroin, it shouldn't have
6 been more than a few days, namely, three, four days at the
7 very most. That is, physiological signs of withdrawal.

8 Q. And this withdrawal can cause depression?

9 A. It's more agitation, really, merely. You know, people
10 complaining about bone aches and not being able to sleep,
11 and so on. It's not so much depression, no.

12 Q. Can you repeat that, please?

13 A. It's mostly agitation, particularly at the beginning,
14 people feeling, you know, ill physically, bone aches,
15 insomniac, anxious, and so on, are the more visible.

16 Q. And you stated that the people used to complain and --

17 A. Of pains, bone pains, or headaches, or whatever.

18 Q. Because of this withdrawal.

19 A. If they have physiological signs of withdrawal, if
20 they have a significant drug abuse problem, they could, yes.

21 Q. You stated that drug abuse was a mental illness or a
22 mental condition. Is that correct?

23 A. It's considered a psychiatric diagnosis, yes.

24 Q. And when you -- when you made a report -- when you
25 made -- excuse me -- when you make a report, you consider

1 any mental illness background to reach an accurate
2 conclusion about the -- about the diagnosis of these people?

3 A. Yes.

4 Q. When you make -- when you made the forensic
5 psychiatric report, did you mention something about drugs in
6 this case?

7 A. I don't think I did, on my report.

8 Q. You didn't.

9 A. No.

10 Q. But from the record it was apparent that this person
11 had drug problems.

12 A. Yeah, but in my opinion that wasn't directly relevant
13 to the issues, and focusing on the case by nature of the
14 range of my testimony, that was a past history before he
15 entered the facility and it was no longer an issue, in my
16 estimation, when I reviewed the records.

17 In my report, I try to present those things that are
18 more materially relevant, in a more brief or succinct manner
19 as to the issues of the case. There is no sense in bringing
20 additional information that is not directly relevant or is
21 in the past.

22 Q. So you found more relevant the statement of
23 Miss Alsina than any document in the medical record that
24 suggests that Ocasio Alsina might have some problem with
25 drugs?

1 **A.** No, no, I didn't say that.

2 In reviewing the medical records, you do a critical
3 analysis. As an expert, you do a screening and you consider
4 several things in analyzing the central issues of a case,
5 and you then would make a priority as to what issues are
6 important now or relevant to the mental state we are
7 analyzing at this point. That is to say, as a result of the
8 events of November the 7th.

9 His history of substance abuse in the past, in my
10 opinion, when I reviewed the record, was not something that
11 I needed to include in my report, because it was not
12 directly relevant. It wasn't affecting his mentation, it
13 wasn't related to the issues we were discussing, what we
14 needed to make opinions about that were before the Court.
15 It was something that was way in the past and had no direct
16 bearing on the issues under analysis, in my opinion.

17 So that's why it wasn't mentioned. But it was on the
18 record.

19 **Q.** So what you mean is that you completely disregarded
20 the --

21 **A.** No.

22 **Q.** Well, I am just asking you if you disregard any mental
23 condition related to drug addiction in this case.

24 **A.** No, I did not disregard it. I knew he had a history
25 of substance abuse in the past, but what I am saying is, in

1 analyzing the record and in analyzing the information that I
2 reviewed that was more contemporaneous, was more directly
3 relevant to the time frame we are discussing, in my opinion,
4 that did not -- that is to say, the history of past
5 substance abuse did not have any significance in my making a
6 diagnosis for the time period we are involved in now in this
7 case.

8 Q. So did you find any document that stated, in the
9 medical record, that Ocasio Alsina overcame his drug abuse
10 problem?

11 A. There is no record that he had a substance abuse
12 problem in prison.

13 Q. So --

14 A. So logically, yes, I assumed that he no longer had a
15 substance abuse problem at the time of the riot or after the
16 riot.

17 Q. So you think that he was -- when he entered the --
18 when he entered the correctional facilities, he was cured of
19 his drug addiction problem.

20 A. Well, that's a reasonable assumption, that at least he
21 was free of drugs.

22 When one enters the facility, you know, you are
23 searched, you are treated, you are detoxed, or whatever.
24 That was a reasonable assumption.

25 But bear in mind that we are focusing on the time

1 frame of November the 7th.

2 Q. But there is any possibility that during this time
3 frame he wasn't cured of his drug addiction?

4 A. That is possible, but it's not reflected in the
5 record, so I think it's a reasonable assumption that he was
6 not abusing drugs during that period of time, because there
7 is no indication that he was, on the record.

8 Q. There is no indication on the record that he had drug
9 problems? Is that what you are stating?

10 A. No, no, no, no --

11 MR. JAMES: Objection, your Honor.

12 Unjust summary of what he priorly stated. He said at
13 that time.

14 THE COURT: He said at that time.

15 BY MR. GONZALEZ:

16 Q. So at that time -- you assumed that at that moment he
17 overcame his drug addiction. But the reality is that there
18 is no evidence in the record that showed that -- there is no
19 evidence in the record that can -- in which you can conclude
20 that he had some treatment or that he had some -- or that he
21 had actually overcame his problem?

22 A. There is no evidence on the record that he had an
23 active substance abuse problem in the correctional system;
24 that it was proven or tested or demonstrated that he was
25 taking drugs in the correctional facility. There is no such

1 medical record.

2 And, in my opinion, should he have been, then most
3 probably at some point he would have been treated or
4 detected or tested, or there would have been some record.
5 And the fact is that the records that we have, like the
6 checklists we mentioned earlier from June and July of 1997
7 that were done by certain mental health professionals, did
8 not reflect that he was actively -- did not reflect that he
9 was actively using drugs or that it was proven or that it
10 had been tested to document the existence of the drugs.
11 There is no such thing.

12 Q. Dr. Llado, you were hired for this case, so you only
13 considered the fact that the plaintiffs want to prove in
14 this case; is that correct?

15 A. No, no, no, that's not correct.

16 Q. If your assumption is wrong, then that would
17 invalidate your assessment of damages.

18 A. What assumption?

19 MR. JAMES: Objection, your Honor.

20 Unjust summary of what was priorly stated.

21 MR. GONZALEZ: Well, your Honor, I think that I am
22 asking a valid question about his foundation for -- to reach
23 a conclusion in this case.

24 THE COURT: What is it that you want him to state?
25 What is your question?

1 **MR. GONZALEZ:** Well, my question is, your Honor,
2 that if there is any evidence from the record that -- if in
3 the record there exists any document that invalidates that
4 Ocasio Alsina would have, in this time period -- in that
5 time period that we are talking about, a drug problem.

6 **MR. JAMES:** Objection, your Honor.

7 That has been asked and answered.

8 **THE COURT:** He has already testified that there is
9 no such document. You see? He says that there are no
10 records that would indicate that he had that problem during
11 that time period.

12 **BY MR. GONZALEZ:**

13 **Q.** When you were reviewing the medical record of
14 Mr. Ocasio, did you consider any waivers of treatment that
15 were in the record?

16 **A.** I saw a couple of documents that are sort of titled
17 like that, yeah. I remember that.

18 **Q.** Did you see any document that stated that he was taken
19 to the hospital?

20 **A.** I don't remember that one, but I saw several documents
21 where he was soliciting and requesting treatment a couple of
22 times in November and December. I don't know if those are
23 the ones you are referring to.

24 **Q.** Did you see any document that stated or in which can
25 be demonstrated that he was taken to the hospital for a CT

1 scan?

2 A. I don't recall that. I mean, the record is so -- I
3 don't ever recall seeing a result of a CT scan either, but
4 the records are so tremendously large -- they take a full
5 drawer in my file cabinet -- so I don't -- that, I don't
6 remember.

7 Q. So you didn't personally treat Ocasio Alsina in this
8 case.

9 A. No, he died. When I was evaluating this case, he had
10 already died.

11 Q. Have you personally treated Miss Maria Alsina in this
12 case?

13 A. No, I never have.

14 Q. What do you consider lack of access to medical care?

15 A. Well, he had very serious medical conditions: AIDS,
16 toxoplasmosis, and so on, and depression, and he was not
17 treated, is my understanding, until January. So after the
18 events of November the 7th, then we are talking about at
19 least a good couple of months, essentially, without proper
20 access to the comprehensive treatment he needed.

21 Q. So the medical record that you saw, that you
22 evaluated, was generated by doctors or physicians; is that
23 true?

24 A. Well, some of them were by others, like I said, some
25 mental health professionals, but if they are medical

1 records, they are usually written by physicians, although
2 there may be other professionals, you know, lab technicians,
3 or whatever. Many times it would be physicians.

4 Q. So we can say that he was seen by medical staff, by
5 some medical staff during that time?

6 A. I don't think so. I don't recall. The time we are
7 referring to here, the span of time, when he was treated
8 between November the 8th and January, it is my understanding
9 that he was never treated.

10 Q. I am not talking that if he was treated, I am talking
11 that if he was seen; that if some medical professional made
12 some kind of evaluation upon Ocasio Alsina.

13 A. Between November the 8th and January?

14 Q. Um-hmm.

15 A. Not that I can remember? Where there is a full
16 medical assessment? No.

17 Q. No, not a full medical assessment. My question is
18 that if a person -- if a medical staff had seen Ocasio
19 Alsina in any manner or in any way during that period of
20 time.

21 A. I think -- I really don't remember that he was ever
22 seen by a physician or treated by a physician during that
23 period of time.

24 Q. No, but by a lab technician or by a --

25 A. Oh, I don't -- I don't recall that. I think right

1 after the riot, he may have been assisted by some other
2 personnel, but not a physician.

3 Q. Okay.

4 But some kind of -- so he was seen by some kind of
5 medical personnel.

6 A. But then again, though, no full medical assessment or
7 evaluation was found on the record. I vaguely recall his
8 being seen by someone. I don't know if it was a physician
9 assistant or a nurse, or something, shortly after the riot,
10 but that's all.

11 MR. GONZALEZ: I have no further question, your
12 Honor.

13 THE COURT: You don't have any questions?

14 MR. JAMES: I have no questions.

15 THE COURT: I do have a question, doctor.

16 You said that you reviewed the medical file of this
17 plaintiff, and you also reviewed the report by Dr. Marcial.

18 THE WITNESS: Yes, sir.

19 THE COURT: Did you notice in that report or in
20 those medical files that a CT scan had been performed on
21 this patient, without contrast, before January? Between
22 November 7th and January.

23 THE WITNESS: No. No.

24 THE COURT: You didn't see that?

25 THE WITNESS: No.

1 **THE COURT:** And you said that, if I believe
2 correctly, or you are inferring that this patient had
3 toxoplasmosis even before January and dating back most
4 probably to the time that he entered the correctional
5 system.

6 Upon what do you base that inference?

7 **THE WITNESS:** Well, it's on the records, and
8 that -- and also it's also mentioned the diagnosis of
9 toxoplasmosis by Dr. Marcial.

10 **THE COURT:** So the basis for that inference would
11 be the autopsy report, the -- Dr. Marcial's report, and what
12 happened in January when he was intervened at the Medical
13 Center.

14 **THE WITNESS:** Later on, yes. Yes. Um-hmm.

15 **THE COURT:** Okay.

16 So -- but -- so your inference with respect to a
17 retroactive condition concerning this toxoplasmosis is based
18 on those documents.

19 **THE WITNESS:** Yes, it is retrospective. You know,
20 it's because of the extent of the damage found according to
21 Dr. Marcial --

22 **THE COURT:** Then would the blow that he received
23 at the riot have made any difference with respect to his
24 developing the toxoplasmosis?

25 **THE WITNESS:** No, no, no. According to

1 Dr. Marcial, the toxoplasmosis was already there. And
2 actually the blow contributed to the damage in the brain
3 because the toxoplasmosis lesions debilitate the boundaries
4 of the brain --

5 THE COURT: And they try to push out --

6 THE WITNESS: -- and fracture more easily and
7 cause more damage, because the toxoplasmosis is a
8 space-occupying lesion.

9 THE COURT: Yes.

10 THE WITNESS: Yes.

11 THE COURT: And eventually it found it's way to
12 the brain stem.

13 THE WITNESS: Exactly.

14 THE COURT: I have no further questions.

15 Do you have any further questions?

16 MS. APARICIO: No.

17 THE COURT: Thank you, doctor, very much.

18 You are excused.

19 THE WITNESS: Thank you.

20 (The witness is excused.)

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REPORTER'S CERTIFICATE

I, BARBARA DACHMAN, Official Court Reporter in the United States District Court for the District of Puerto Rico, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of the proceedings had in the within entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared under my direction.

BARBARA DACHMAN